

**SUBCHAPTER G : CERTIFICATES OF CONVENIENCE AND NECESSITY**

§§291.101-291.119  
Effective May 20, 1997

**§291.101. Certificate Required.**

(a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate that the present or future public convenience and necessity requires or will require that installation, operation, or extension. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to the Texas Water Code, §13.242(c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility.

Adopted December 6, 1995

Effective January 10, 1996

**§291.102. Criteria for Considering and Granting Certificates or Amendments.**

The commission may grant applications and issue or amend certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. In considering whether to grant or amend a certificate, the commission shall consider:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area;
- (3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity; and

(8) the probable improvement in service or lowering of cost to consumers in that area.

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Effective January 10, 1996

**§291.103. Certificates Not Required.**

(a) Extension of Service.

(1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of public convenience and necessity, a retail public utility is not required to secure a certificate of public convenience and necessity for:

(A) an extension into territory contiguous to that already served by it, if the point of ultimate use is within one quarter mile of the boundary of its certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or

(B) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.

(2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the certificated area clearly showing the extension, accompanied by a written explanation of the extension.

(b) Construction of Facilities. A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

(c) Municipality Pursuant to the Texas Water Code, §13.255. A municipality which has given notice under the Texas Water Code, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:

(1) a copy of the notice required pursuant to the Texas Water Code, §13.255; and

(2) a map showing the area affected under the Texas Water Code, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.

(d) Utility or Water Supply Corporation With Less Than 15 Potential Connections.

(1) A utility or water supply corporation is exempt from the requirement to possess a certificate of convenience and necessity in order to provide retail water service if it:

- (A) has less than 15 potential service connections;
  - (B) is not owned by or affiliated with a retail public utility or any other provider of potable water service;
  - (C) is not within the certificated area of another retail public utility; and
  - (D) is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.
- (2) Utilities or water supply corporations currently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.
- (3) The executive director may revoke the current certificate of convenience and necessity upon written request by the exempt utility or water supply corporation.
- (4) An exempted utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the executive director which shall not be more stringent than those in §§291.80 - 291.90 of this title.
- (5) The exempted utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.
- (6) Exempt Utility Tariff and Rate Change Requirements. An exempted utility operating with or without a certificate of convenience and necessity:
- (A) must maintain a current copy of the exempt utility tariff form with its current rates at its business location; and
  - (B) may change its rates without following the requirements in §291.22 of this title (relating to Notice of Intent to Change Rates) if it provides each customer with written notice of rate changes prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written protests may be submitted to the commission at that address. If the commission receives written protests to a proposed rate change from at least 50% of the customers of an exempt utility following this procedure within 90 days after the effective date of the rate change, the executive director will review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments from customers or the exempt utility, the executive director will establish the rates to be charged by the exempt utility which shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and customers. These rates may not be changed for 12 months after the proposed effective date without authorization by the executive director. The exempt utility shall refund any rates collected in excess of the rates established by the executive director in accordance with the time frames or other requirements established by the executive director.
  - (C) The exempt utility or water supply corporation, public interest counsel, or any affected customer may file a written request for reconsideration or protest of the executive director's decision

on rates with the chief clerk not later than the 20th day after the date on which the executive director mailed his decision to the exempt utility and customers. The rates determined by the executive director shall remain in effect while the commission considers the request or protest. If the request or protest is not acted on by the commission within 45 days after the date on which the executive director mailed his decision on rates to the exempt provider and customers, the request shall be deemed to be overruled.

(D) A rate change application filed by an exempt utility that follows the rate change procedures in §291.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.

(7) Unless authorized in writing by the executive director, a utility or a water supply corporation operating under these requirements may not cease utility operations. A utility may not discontinue service to a customer with or without notice except in accordance with the Exempt Utility Tariff Form and a water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.

(8) A utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff specified by the executive director shall be subject to any and all enforcement remedies provided by this chapter and the Texas Water Code, Chapter 13.

Adopted December 6, 1995

Effective January 10, 1996

#### **§291.104. Applicant.**

It is the responsibility of the owner of the utility or the President of the Board of Directors or designated representative of the water supply or sewer service corporation, affected county, district or municipality to submit an application for a certificate of convenience and necessity.

Adopted December 6, 1995

Effective January 10, 1996

#### **§291.105. Contents of Certificate of Convenience and Necessity Applications.**

Applications for certificates of convenience and necessity or for an amendment to a certificate shall contain an original and three copies of the following materials unless otherwise specified in the application:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed;

(2) a State Highway County Map, or equivalent, which clearly defines the proposed service area of the applicant. Service boundaries shall conform to verifiable landmarks such as roads, creeks, and railroads. Separate maps shall be filed for each county in which the retail public utility operates;

(3) other more detailed maps as may be specified in the application form;

(4) an original and three copies of any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit or license from the proper municipality or other public authority;

(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(6) a schedule for the ultimate construction of all proposed facilities, keyed to maps showing where such facilities will be located to provide service;

(7) source of funding for facilities;

(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;

(9) disclosure of all affiliated interests as defined by §291.3 of this title (relating to Definition of Terms); or

(10) any other information that the executive director may reasonably require.

Adopted December 6, 1995

Effective January 10, 1996

**§291.106. Notice for Applications for Certificates of Convenience and Necessity.**

(a) If an application for issuance or amendment of a certificate of public convenience and necessity is filed, the applicant will prepare a notice or notices, as prescribed in the commission's application form, which will include the following:

(1) all information outlined in the Administrative Procedure Act, Texas Civil Statutes, Article 6252-13a, §13;

(2) all information stipulated in the commission's Instructions for Completing an Application for a Certificate of Convenience and Necessity; and

(3) a statement that persons who wish to intervene or comment upon the action sought should contact the Utility Rates and Services Section, Water Utilities Division, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and/or mailing.

(1) The applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

(2) Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.

(3) Utilities that are required to possess a certificate but that are currently providing service without a certificate must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date those rates were instituted and any other information required in the application.

(4) Within 30 days of the date of the notice, the applicant shall submit to the commission an affidavit specifying the persons to whom notice was provided and the date of that notice.

(c) The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(d) The commission may require the applicant to deliver notice to other affected persons or agencies.

Adopted December 6, 1995

Effective January 10, 1996

**§291.107. Action on Applications.**

(a) The commission may conduct a public hearing on any application.

(b) The commission may take action on an application at a regular meeting without holding a public hearing if 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing has been requested.

(c) The executive director may take action on an application which is uncontested at the end of the 30 day protest period following mailed or published notice or for which all protests are subsequently withdrawn in accordance with Chapter 263 of this title (relating to Final Approval By Executive Director, Evaluation of Request for Contested Case Hearing).

(d) If a hearing is requested, the application will be processed in accordance with Chapter 263 of this title (relating to Final Approval By Executive Director, Evaluation of Request for Contested Case Hearing).

Adopted December 6, 1995

Effective January 10, 1996

**§291.109. Report of Sale, Merger, or Consolidation.**

(a) At least 120 days before the proposed effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall notify the commission and give public notice of the proposed transaction. The notification shall be on the form required by the commission. Public notice may be waived by the executive director for good cause shown.

(b) The commission shall, with or without a public hearing, investigate the sale, acquisition, lease, rental, merger or consolidation to determine whether the transaction will serve the public interest.

(c) Prior to the expiration of the 120-day notification period, the executive director shall notify all known parties to the transaction of the decision to either approve the sale administratively or to request that the commission hold a public hearing to determine if the transaction will serve the public interest. The executive director may request a hearing if:

(1) the notification to the commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system is inexperienced as a utility service provider;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of noncompliance with the requirements of the commission or the Texas Department of Health or of continuing mismanagement or misuse of revenues as a utility service provider;

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system;

(5) it is in the public interest to investigate the following factors:

(A) whether the seller has failed to comply with a commission order;

(B) the adequacy of service currently provided to the area;

(C) the need for additional service in the requested area;

(D) the effect of approving the transaction on the utility or water supply or sewer service corporation, the person purchasing or acquiring the water or sewer system, and on any retail public utility of the same kind already serving the proximate area;

(E) the ability of the person purchasing or acquiring the water or sewer system to provide adequate service;

(F) the feasibility of obtaining service from an adjacent retail public utility;

(G) the financial stability of the person purchasing or acquiring the water or sewer system, including, if applicable, the adequacy of the debt-equity ratio of the person purchasing or acquiring the water or sewer system if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

(d) Unless the executive director requests that a public hearing be held, the sale, acquisition, lease, or rental or merger or consolidation may be completed as proposed at the end of the 120-day period or may be completed at any time after the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.

(e) Within 30 days after the actual effective date of the transaction, the utility or water supply or sewer service corporation must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and documentation that customer deposits have been transferred or refunded to the customer with interest as required by these rules.

(f) If a hearing is requested or if the utility or water supply or sewer service corporation fails to provide the required notification or public notice, the sale, acquisition, lease, merger, consolidation or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.

(g) A sale, acquisition, lease, or rental of any water or sewer system, required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of the Texas Water Code, §13.301 is void.

(h) The requirements of the Texas Water Code, §13.301 do not apply to the purchase of replacement property, to a transaction under the Texas Water Code, §13.255 or to foreclosure on the physical assets of a utility.

(i) If a utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its certificate of convenience and necessity, or controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(j) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.



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Effective January 10, 1996

**§291.110. Foreclosure and Bankruptcy.**

(a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the commission in writing of that fact not later than the 10th day after the date on which the utility receives the notice.

(b) A person other than a financial institution that forecloses on facilities used to provide utility services shall not charge or collect rates for providing utility service unless the person has a completed application for a certificate of convenience and necessity or to transfer the current certificate of convenience and necessity on file with the commission within 30 days after the foreclosure is completed.

(c) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by §13.301 of the code, but shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

(d) The financial institution may operate the utility for an interim period not to exceed 12 months before transferring or otherwise obtaining a certificate of convenience and necessity unless the executive director in writing extends the time period. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.

(e) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the commission in writing.

Adopted December 6, 1995

Effective January 10, 1996

**§291.111. Purchase of Voting Stock in Another Utility.**

(a) At least 60 days before a utility purchases voting stock in or a person acquires a controlling interest in a utility doing business in this state, the utility or person shall notify the commission of the proposed purchase or acquisition.

(b) The executive director may request that the commission hold a public hearing on the transaction if the executive director believes that a criteria prescribed by §291.109(c) of this title (relating to Foreclosure and Bankruptcy) applies.

(c) Unless the executive director requests that a public hearing be held, the purchase or acquisition may be completed as proposed at the end of the 60 day period or may be completed at any time after the executive director notifies the person or utility that a hearing will not be requested.

(d) The utility or person must notify the commission within 30 days after the date that the transaction is completed.

(e) If a hearing is requested by the executive director or if the person or utility fails to provide the required notification to the commission 60 days prior to the transaction, the purchase or acquisition may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

Adopted December 6, 1995

Effective January 10, 1996

**§291.112. Transfer of Certificate of Convenience and Necessity.**

(a) Effective date of transfer. A certificate is issued in personam, continues in force until further order of the commission, and may be transferred only by the approval of the commission. Any attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Sale, assignment, or lease of certificate of convenience and necessity. Except as provided by the Texas Water Code, §13.255, a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the Texas Water Code, §13.246(c). The sale, assignment, or lease shall be on the conditions prescribed by the commission.

(c) Notice of proposed sale, acquisition, lease, rental, merger, or consolidation and transfer of a certificate of convenience and necessity.

(1) Unless notice is waived by the executive director for good cause shown, mailed notice shall be given to customers of the water or sewer system to be sold, acquired, leased or rented or merged or consolidated and other affected parties as determined by the executive director on the form prescribed by the executive director and shall include the following:

(A) the name and business address of the currently certificated retail public utility and the retail public utility which will acquire the facilities or certificate;

(B) a description of the service area of the retail public utility being transferred;

(C) the anticipated effect of the acquisition or transfer on the operation or the rates and services provided to customers being transferred; and

(D) a statement that persons who wish to comment upon the action sought should contact the designated representative of the executive director at the commission's mailing address within 30 days of mailing or publication of notice, whichever occurs later.

(2) The commission may require the applicant to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the area in which the retail public utility being transferred is located and publication may be allowed in lieu of individual notice as required in this subsection.

(3) The applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the requested service area, and any city with an extraterritorial jurisdiction which overlaps the proposed service area.

(4) If the executive director does not request a hearing, the commission may approve the transfer by order at a regular meeting of the commission.

(5) If a hearing is requested, the application will be processed in accordance with Chapter 263 of this title (relating to Final Approval By Executive Director, Evaluation of Request for Contested Case Hearing).

(6) The commission may approve a sale, acquisition, lease or rental, or merger or consolidation and/or transfer of a certificate of convenience and necessity if it determines that the transaction is in the public interest after considering:

(A) if notice has been properly given;

(B) if the retail public utility which will acquire the facilities or certificate is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors set forth in the Texas Water Code, §13.246(c). The commission may refuse to approve a sale, acquisition, lease, rental, merger, or consolidation and/or transfer where conditions of a judicial decree, compliance agreement or other enforcement order have not been substantially met;

(C) the experience of the person purchasing or acquiring the water or sewer system as a utility service provider;

(D) the history of the person or an affiliated interest of the person in complying with the requirements of the commission or the Texas Department of Health or of properly managing or using revenues as a utility service provider; or

(E) the ability of the person purchasing or acquiring the water or sewer system to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system.

(d) Reporting of customer deposits. Within 30 days after the sale or transfer of any utility or operating units thereof, the seller shall file with the commission, under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest.

Adopted August 21, 1996

Effective September 20, 1996

**§291.113. Revocation or Amendment of Certificate.**

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience

and necessity if it finds that the certificate holder has never provided, is no longer providing service or has failed to provide continuous and adequate service in the area, or part of the area covered by the certificate.

(b) If the certificate of any utility is revoked or amended, the commission may require one or more utilities to provide service in the area in question.

Adopted December 6, 1995

Effective January 10, 1996

**§291.114. Requirement to Provide Continuous and Adequate Service.**

Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;

(3) nonuse; or

(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.

Adopted December 6, 1995

Effective January 10, 1996

**§291.115. Cessation of Operations by a Retail Public Utility.**

(a) Any retail public utility which possesses or is required to possess a certificate of convenience and necessity desiring to discontinue, reduce or impair utility service, except under the conditions listed in the Texas Water Code, §13.250(b), must file a petition with the commission which sets out:

(1) the action proposed by the retail public utility;

(2) the proposed effective date of the actions which must be at least 120 days after the petition is filed with the commission;

(3) a concise statement of the reasons for proposing the action; and

(4) the area affected by the action, including maps as described by §291.106(2) and (3) of this title (relating to Notice for Applications for Certificates of Convenience and Necessity).

(b) The retail public utility shall submit a proposed notice to be provided to customers of the utility and other affected parties which will include the following:

- (1) the name and business address of the retail public utility which seeks to cease operations;
- (2) a description of the service area of the retail public utility involved;
- (3) the anticipated effect of the cessation of operations on the rates and services provided to the customers; and
- (4) a statement that persons who wish to intervene or comment upon the action sought should contact the designated representative of the executive director at the commission's mailing address within 30 days of mailing or publication of notice, whichever occurs later.

(c) After review by the commission, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the petitioner's service area and any city whose extraterritorial jurisdiction overlaps the applicant's service area, and to the customers of the applicant proposing to cease operations.

(d) The applicant may be required by the executive director or the commission to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county of operation which shall include, in addition to the information specified in subsection (b) of this section:

- (1) the sale price of the facilities;
- (2) the name and mailing address of the owner of the retail public utility; and
- (3) the business telephone of the retail public utility.

(e) The commission may require the applicant to deliver notice to other affected persons or agencies.

(f) If, 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing is requested, the commission may consider the application for final decision without further hearing.

(g) If a hearing is requested, the application will be processed in accordance with Chapter 263 of this title (relating to Final Approval By Executive Director, Evaluation of Request for Contested Case Hearing).

(h) In no circumstance may a retail public utility which possesses or is required to possess a certificate of convenience and necessity, a person who possesses facilities used to provide utility service, or a water utility or water supply corporation with less than 15 connections that is operating without a certificate of convenience and necessity pursuant to §291.103(d) of this title (relating to Certificates Not Required) cease operations without commission authorization.

(i) In determining whether to grant authorization to the retail public utility for discontinuation, reduction, or impairment of utility service, the commission shall consider, but is not limited to, the following factors:

- (1) the effect on the customers;
- (2) the costs associated with bringing the system into compliance;
- (3) the applicant's diligence in locating alternative sources of service;
- (4) the applicant's efforts to sell the system, such as running advertisements, contacting similar adjacent retail public utilities, or discussing cooperative organization with the customers;
- (5) the asking price for purchase of the system as it relates to the undepreciated original cost of the system for ratemaking purposes;
- (6) the relationship between the applicant and the original developer of the area served;
- (7) the availability of alternative sources of service, such as adjacent retail public utilities or groundwater; and
- (8) the feasibility of customers obtaining service from alternative sources, considering the costs to the customer, quality of service available from the alternative source, and length of time before full service can be provided.

(j) If a utility does abandon operation of its facilities without commission authorization, the commission may appoint a temporary manager to take over operations of the facilities to ensure continuous and adequate service.

Adopted December 6, 1995

Effective January 10, 1996

**§291.116. Exclusiveness of Certificates.**

Any certificate granted under this subchapter shall not be construed to vest exclusive service or property rights in and to the area certificated. The commission may grant, upon finding that the public convenience and necessity requires additional certification to another retail public utility or utilities, additional certification to any other retail public utility or utilities to all or any part of the area previously certificated pursuant to this chapter.

Adopted December 6, 1995

Effective January 10, 1996

**§291.117. Contracts Valid and Enforceable.**

Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after notice and hearing, are valid and enforceable and are incorporated into the certificates of public convenience and necessity.

Adopted December 6, 1995

Effective January 10, 1996

**§291.118. Contents of Request for Commission Order Under the Texas Water Code, §13.252.**

If a retail public utility in constructing or extending a line, plant or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the commission may issue an order prohibiting the construction, extension, or provision of service, or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for commission order shall include the following:

- (1) the name and business address of the retail public utility making the request;
- (2) the name and business address of the retail public utility which is to be the subject of the order;
- (3) a description of the alleged interference;
- (4) a map showing the service area of the requesting utility which clearly shows the location of the alleged interference;
- (5) copies of any other information or documentation which would support the position of the requesting utility;
- (6) the filing fee as prescribed by the Texas Water Code, §5.235; and
- (7) other information as the executive director may require.

Adopted December 6, 1995

Effective January 10, 1996

**§291.119. Filing of Maps.**

On request by the commission, each utility and water supply or sewer service corporation shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

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**Disposition Table**  
**Chapter 291 - Water Rates**  
**Subchapter G : Certificates of Convenience and Necessity**

**Rule Log No. 96174-050-AD**  
**Adopted April 16, 1997**  
**Effective May 20, 1997**

This table is to track sections during and after rule revisions. The column on the left lists the current sections prior to the revision. The column on the right lists where the section is proposed to end up in the final adoption.

<b>Old Section</b>	<b>New Section</b>
291.108	50.45